IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/10/2002

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.30010 of 2002 and W.P.No. 36501 of 2002

M/s.G.S.K.Constructions
3/98, Nilavarapatti Post
Salem District-636 201.
Rep. by its Managing Partner
G.Karunanidhi .. Petitioner
in both W.P.s
-Vs-

Tamil Nadu Water Supply and
Drainage Board, rep. by its
Executive Engineer
Maintenance Division (Siruvani)
15, Raghupathy Layout II,
SRP Nagar, Coimbatore-641 011. .. respondent
in WP:30010/
2002 and 2nd
respondent in
WP:36501/2002

The Tamil Nadu Water Supply and
Drainage Board, rep. by its
Managing Director, Chennai .. 1st respondent
in WP:36501/2002

PRAYER: Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.M.Ravi

For Respondents : Mrs.Sudarsanasundar
for respondent in WP:30010/
2002 and 2nd respondent in
WP:36501/2002

:ORDER

These writ petitions are relating to the sale of 4 mm H.T. Coils, 9 mm A.T. Coils and 22 mm of M.S. Rods by tender-cum-auction dated 25.6 .2002 of the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501

of 2002).

2. The undisputed facts of the case are that:
(i) the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002), by notice of tender-cum-auction dated 25.6.2002 proposed sale of unserviceable materials, namely 4 mm H.T. Coils, 9 mm A.T. Coils and 22 mm of M.S. Rods, lying at Siruvani Nagar, and Sirvani Adivaram, Coimbatore.

(ii) As per the tender-cum-auction notice, the last date for receipt of tenders was fixed as 11 a.m. on 8.7.2002 and the auction was fixed to be held at 11 a.m. on 9.7.2002 at the office of the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002).

(iii) One of the conditions of the tender-cum-auction notice is that the successful tenderer/ bidder at the auction should remit 25% of the tender/bid amount in cash on the date of auction itself.

(iv) The respondent in W.P.No.30010 of 2002 (second respondent in W. P.No.36501 of 2002), reserves the right to reject the tender/bid or to adjourn the same without any notice.

3. Accordingly, exercising the powers conferred on the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002) under Clause 6 of the tender-cum-auction notice dated 25.6.2002, the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002), without accepting the tenders or auction as per the tendercum-auction notice dated 25.6.2002, invited fresh tenders by retendercum-auction notice dated 12.7.2002. Aggrieved by the said retendercum-auction notice dated 12.7.2002, the petitioner in W.P.No.30010 seeks a writ of Certiorarified Mandamus to call for the records of the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002) relating to retender-cum-auction bearing No.3687 (Ka.No.Ko. Survey Report (Ko)/Uu.Va.2002) dated 12.7.2002, quash the same and issue consequential directions to the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002) to issue sale order in favour of the petitioner in respect of 4mm & 9mm H.T. Coils for which auction was conducted on 9.7.2002, after receiving balance 75% of the sale amount.

4. This Court without admitting the writ petition No.30010 of 2002, ordered notice regarding admission and permitted the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002) to proceed with retender-cum-auction notice dated 12.7.2002, but stayed the confirmation.

5. Pending further orders in the said W.P.No.30010 of 2002, the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002), by proceedings dated 10.7.2002 rejected the tender of the petitioner and requested the petitioner to collect earnest money deposit paid by the petitioner. Hence, the petitioner filed W.P.No.36501 of 2002 seeks a writ of Certiorarified Mandamus to call for the records of the second respondent in W.P.No.36501 of 2002 (respondent in W.P. No.30010 of 2002) in (i) Lr.No.F SR(CBE)-1/ADM/2002, dated 9.7.2002, (ii) Lr.No.F SR(CBE)-4/ADM/2002, dated 10.7.2002, and (iii) Lr.No.F SR(CBE)-1/ADM/2002, dated 19.8.2002, quash the

same and issue consequential directions to the respondents to confirm the sale order in favour of the petitioner in respect of sale of 4mm H.T. Coil and 9mm H.T. Coil for which auction and tender was conducted on 9.7.20902, after receiving balance 75% of the sale amount.

6.1. Mr.M.Ravi, learned counsel for the petitioner placing reliance on the Tamil Nadu Transparency in Tenders Act, 1998 (hereinafter referred to as the 'Act') contends that, before rejecting a tender/bid offered by the petitioner, the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002) ought to have called the petitioner for negotiation as provided under Section 10(3) of the Act, and further contends that the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002) cannot pass an order dated 10.7.2002 rejecting the tender or bid of the petitioner without holding a negotiation, placing reliance on Section 12(2) of the Act.

6.2. Mr.M.Ravi, learned counsel for the petitioner placing reliance on the decision in RAM & SHYAM CO. Vs. STATE OF HARYANA reported in AIR 1985 SC 1147 contends that when the petitioner has given highest bid and the same is rejected arbitrarily, he is entitled to invoke Article 226 of the Constitution of India, challenging the retender-cumauction notice dated 12.7.2002 as well as the order of rejecting his tender/bid dated 10.7.2002 passed by the respondent in W.P.No.30010 of 2002 (second respondent in W.P.No.36501 of 2002).

7. I am unable to appreciate the above contentions of the learned counsel for the petitioner placing reliance under Section 10(3) or 12(2) of the Act.

8. In my considered opinion, Section 10(3) of the Act is only an enabling provision for the respondent to have negotiation, but the same is not mandatory. Once Section 10(3) of the Act is only discretionary, but not mandatory, the contention of the learned counsel for the petitioner that there cannot be any rejection of tender/bid under Section 12(2) of the Act without holding negotiation under Section 10(3) of the Act, is also not tenable and liable to be rejected. The authorities who have invited tenders are the best judge to decide either to accept or reject the same, taking note of the entire stock of the tenders and the subject matter of the work, for which the tenders were called for. The Apex Court repeatedly insists that there should be 'play in the joints' to enable the authorities to take appropriate decisions in accepting or rejecting the tender/bid.

9. In the instant case, admittedly, the tender/bid offered by the petitioner has not yet been confirmed. Therefore, unless sufficient material is placed before this Court satisfying that public interest at large would be affected by calling of the fresh tender and the refusal or rejection of the tender/bid offered by the petitioner is attracted by mala fide, it may not be permissible for this Court to interfere with such powers of the authorities in issuing notice for retender-cum-auction.

Hence, for all these reasons, finding no merits, these writ petitions are dismissed. No costs. Consequently, W.P.M.P.Nos.43875, 43876, 54902 and 54903 of 2002 are also dismissed.

3.10.2002
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Index : Yes
Internet: Yes
To:

1. Tamil Nadu Water Supply and
Drainage Board, rep. by its
Executive Engineer
Maintenance Division (Siruvani)
15, Raghupathy Layout II,
SRP Nagar, Coimbatore-641 011.

2. The Tamil Nadu Water Supply and
Drainage Board, rep. by its
Managing Director, Chennai